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March 27, 2003

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Ex Parte Presentation

MAR 27 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Rc: *Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Nevada.* WC Docket No. 03-10

Dear Ms. Dortch:

Track A of section 271 requires a Bell company applicant to demonstrate the existence of "one or more . . . competing providers of telephone exchange service . . . to residential and business subscribers." On March 25, 2003, WorldCom filed an ex parte letter challenging – for the third time in this docket – SBC's Track A showing with respect to "residential subscribers" in Nevada.¹ The **bulk** of the claims raised in this letter are recycled from WorldCom's prior filings, and, as explained below, SBC has refuted them previously. **As** for WorldCom's new claims, they fall far short of rebutting SBC's Track A showing.

Wireline Competitors. WorldCom challenges SBC's reliance on two facilities-based carriers in Nevada – *** and *** – on the theory that neither is actively competing with Nevada Bell for residential customers.² SBC has answered this claim previously, and it will not belabor the point here. The simple fact is that at least one of these carriers (*** ***) is in fact actively competing for residential customers in Nevada Bell's serving area, and, in any event, both of them are actually providing service to more than a *de minimis* number of residential customers. Under the language of the statute and this Commission's precedent, nothing more is required to satisfy Track A.⁴

¹ 47 U.S.C. § 271(c)(1)(A).

² See *Ex Parte Letter of Keith Seat, WorldCom. to Marlene Donch, FCC (Mar. 25, 2003)* ("Worldcom Mar. 25 Ex Parte"). WorldCom previously challenged SBC's Track A showing in Nevada in both its comments (filed February 4, 2003) and its reply comments (filed February 26, 2003).

See WorldCom Mar. 25 Ex Parte at 1

⁴ See SBC Track A Reply Comments at 6-8 (filed Feb. 14, 2003); SBC Supp. Track A Reply Comments at 2-3 (filed Mar. 5, 2003).

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In its recent ex parte, WorldCom now adds a new claim: that one of these carriers (***
***) “apparently” serves only so-called “test” lines that cannot be counted under Track
A.⁵ But WorldCom provides nothing to support this assertion, and the only evidence in the
record is to the contrary.⁶ WorldCom also now claims that the other wireline carrier (***
***) provides only “business services,” the purchasers of which by definition cannot qualify as
“residential customers.”⁷ As the record makes clear, however, *** provides facilities-
based service to numerous customers who previously took residential service from Nevada Bell,
who disconnected that service upon signing on with ***, who in many cases ported
their residential telephone numbers to ***, and who now list their ***
provided telephone numbers in the residential white pages.* It is inconceivable that these
customers do not qualify as “residential subscribers” for purposes of Track A. Finally,
WorldCom suggests that, because *** product offerings may not appeal broadly to
all customers within Nevada Bell’s serving area, it should not be considered for purposes of
Track A.⁹ But no CLEC (WorldCom included) enters residential markets with product offerings
that immediately appeal to *everyone*, and the Commission has made clear that, to qualify as a
“competing provider” under Track A, a carrier need not achieve “any specified level of
geographic penetration” or “serve a specific market share.”¹⁰ Rather, a carrier need only
constitute “an actual commercial alternative,” a standard that is met by demonstrating that the
carrier “serves more than a *de minimis* number of subscribers.”¹¹ As SBC has previously
explained, both *** and *** satisfy that standard as it has been applied
in previous section 271 orders.” Again, nothing more is required to satisfy Track A.¹³

Broadband PCS. WorldCom’s ex parte letter also reiterates its challenge to SBC’s
characterization of broadband PCS provider Cricket Communications Inc. (“Cricket”) as a

⁵ See WorldCom Mar. 25 Ex Parte at 1.

⁶ See J.G. Smith Reply Aff. ¶ 5 (Tab 1 to SBC Track A Reply Comments) (noting that ***
UNE-P lines “are actual UNE-P lines that Nevada Bell is provisioning and that *** is utilizing to
provide local residential service”).

⁷ See WorldCom Mar. 25 Ex Parte at 1-2.

⁸ See J.G. Smith Reply Aff. Attach. E.

⁹ See WorldCom Mar. 25 Ex Parte at 2.

¹⁰ E.g., *Ameritech Michigan Order*, 12 FCC Rcd 20543, 20584-85, ¶¶ 76-77 (1997).

¹¹ *Vermont Order*, 17 FCC Rcd 7625, 7630, ¶ 10 (2002) (internal quotation marks omitted).

¹² See SBC Track A Reply Comments at 5-6; SBC Supp. Track A Reply Comments at 2; see also *Vermont Order*, 17 FCC Rcd at 7630, ¶ 11 (concluding that “Z-Tel . . . serves more than a *de minimis* number of end users” and “represents an actual commercial alternative to Vericon in Vermont”) (internal quotation marks omitted); *Maryland/D.C./West Virginia Order*, WC Docket No. 02-384, FCC 03-57, ¶ 11 (rel. Mar. 19, 2003) (“In West Virginia, we find that CLEC, FiberNet, and StratusWave serve more than a *de minimis* number of residential . . . end users . . . and represent an actual commercial alternative to Verizon in West Virginia”) (internal quotation marks omitted).

¹³ WorldCom also asserts that resale providers do not qualify as “competing providers” under Track A. See WorldCom Mar. 25 Ex Parte at 1. SBC has addressed this claim elsewhere, see SBC Track A Reply Comments at 11-12, and, in any event, because the residential competition in Nevada Bell’s serving area from wireline and broadband PCS providers is sufficient to satisfy Track A, the Commission need not address this issue here.

“competing provider” under Track A. WorldCom’s primary claim in this regard appears to be that, whereas the Commission has defined *wireline* competitors that serve more than a *de minimis* number of customers as “competing providers,” it should adopt a more stringent standard for broadband PCS providers that, it claims, are on the “margin” of Track A.¹⁴ As an initial matter, however, WorldCom’s suggestion that the Commission already adopted such a stringent standard in the *Second Louisiana Order* is incorrect.¹⁵ As SBC has explained previously,¹⁶ the Commission’s use of the term “significant number” in that order referred to BellSouth’s attempt to rely on evidence that customers were “*likely to consider switching* to PCS service based on price.” SBC does not rely on such evidence here. Rather, it relies on evidence that customers *have in fact switched* to PCS service, a showing that falls comfortably within the standards set out in the *Second Louisiana Order*, in a portion of the order that is separate from that on which WorldCom relies here.¹⁷ In any event, even if the Commission were to endorse WorldCom’s “significant number” standard here, Cricket’s status as a wireline replacement for more than 2,800 customers plainly satisfies it.¹⁹

WorldCom also contends that, before concluding that Cricket qualifies as a “competing provider” for purposes of Track A, the Commission must conclude that PCS and wireline service “are in the same product market under traditional antitrust principles.”²⁰ But, as the Department of Justice explains, the Commission’s Track A analysis has never before centered on antitrust market definition, and its examination whether Cricket qualifies as a “competing provider” for purposes of Track A is accordingly not necessarily “coincident with . . . the inquiry relevant to establishing a market in a merger investigation.”²¹ Moreover, formal market definition of the sort WorldCom advocates here would create complex questions of proof that are ill-suited to the 30-day review process required under section 271. As WorldCom itself has argued throughout this proceeding, the Commission has gone to great lengths to provide Bell company applicants a clear roadmap of the requirements for section 271 relief, including the requirements to satisfy Track A. SRC has met those requirements to a tee. To revise the standards now, in the midst of

¹⁴ See WorldCom Mar. 25 Ex Parte at 2-3,

¹⁵ See *id.* at 2, 3

¹⁶ See SBC Supp. Track A Reply Comments at 7

¹⁷ See *Second Louisiana Order*, 13 FCC Rcd 20599, 20628, ¶ 40 (1998) (emphasis added)

¹⁸ See *id.* at 20623-28, ¶¶ 31-33, 35-39.

¹⁹ WorldCom questions this number, primarily on the speculative assertion that consumers that have purchased wireless service “might” not know the difference between wireless and wireline service, and that the survey on which SBC relies accordingly might be unreliable. See WorldCom Mar. 25 Ex Parte at 5 (“[m]any customers might have incorrectly thought they knew what wireline service was,” and those customers who “obtained a definition might have remained confused”). This contention is facially implausible, as is WorldCom’s suggestion that, because the survey provided context regarding what consumers “might choose” to do, it was overly suggestive. See *id.* see also SBC Supp. Track A Reply Comments at 6-7 (noting that SBC relies only on survey respondents that affirmatively stated that they had “disconnected” wireline phone service in their homes due to their decision to purchase Cricket service, and that such respondents cannot plausibly be said to have been “confused”); Frederick Aff. ¶ 11 & Attach. B (Tab 2 to SBC Track A Reply Comments) (describing survey questionnaire).

²⁰ WorldCom Mar. 25 Ex Parte at 4

²¹ See Department of Justice Evaluation at 8-9

SBC's application, would serve no end other than to delay the benefits of added long-distance competition for Nevada consumers.

Finally, WorldCom asserts that Cricket's "continued existence" is in question as a result of financial difficulties, and it contends that, as a "policy" matter, Cricket should accordingly not be considered a "competing provider" under Track A.²² A page later, however, WorldCom asserts that, now that WorldCom itself has entered the local market in Nevada, SBC should be required to "reapply for section 271 authorization based on the new WorldCom entry."²³ WorldCom itself is facing its own, highly publicized financial difficulties. If WorldCom's entry into the local market in Nevada is good enough to satisfy Track A – and WorldCom appears to believe it is – so too is Cricket's. Simply put, Cricket was in the market providing service at the time of SBC's application, and it remains there today. It plainly qualifies as a "competing provider" for purposes of Track A.²⁴

Because this letter contains confidential information, SBC is filing the original and one copy subject to the protective order in this docket. Inquiries regarding access to the confidential material should be addressed to Laura Brennan, Kellogg, Huber, Hansen, Todd & Evans, PLLC, 1615 M Street, N.W., Suite 400, Washington, D.C., 20036, (202) 367-7821. In accordance with this Commission's Public Notice, DA 03-92 (Jan. 14, 2003), SBC is also filing the original and two copies of the redacted version of this letter. Thank you for your assistance in this matter.

Yours truly,



Colin S. Stretch

cc:	Christopher Libertelli	Pamela Arluk
	Matt Brill	Tracey Wilson
	Emily Willeford	Charles Bolle
	Lisa Zaina	Bnanne Kucerik
	Jessica Rosenworcel	Qualex International

²² WorldCom Mar. 25 Ex Panel 4.

²³ *Id.* at 5

²⁴ Although SBC does not rely on WorldCom's entry to suppon its Track A showing, "[WorldCom's] presence" in the local market should give the Commission "further comfort that residential customers currently have alternatives to [Nevada Bell] service." *Arkansas/Missouri Order*, 16 FCC Rcd 20719, 20779, ¶ 120 (2001), *aff'd*, *AT&T Corp. v FCC*, No. 01-1511 (D.C. Cir. Nov. 18, 2002); *see also* http://www.theneighborhood.com/res_local_service/jsp/default.jsp ("the Neighborhood is now available in . . . most areas within . . . Nevada"); *see also* WorldCom Mar. 25 Ex Panel 5 ("WorldCom is in the process of entering Nevada").